

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MACY'S CREDIT AND CUSTOMER  
SERVICE,

Plaintiff

v.

CIVIL ACTION: C-1-12-72

TRILEGIANT CORPORATION, *et al.*

Defendants

**TRIAL PROCEDURAL ORDER**

The **COURT ORDERS** that the parties shall comply with the following:

**A. EXPERT WITNESSES**

The parties shall certify as part of the proposed Joint Final Pretrial Order that they have complied with Fed. R. Civ. P. 26 pertaining to expert testimony. Additionally, the parties shall submit with the Joint Final Pretrial Order a curriculum vitae and a binding summary of the written reports of the expert witnesses who will testify at trial.

**B. WITNESS LIST**

Upon filing of the Joint Pretrial Order, the parties shall file with the Court and submit a copy via email ([weber\\_chambers@ohsd.uscourts.gov](mailto:weber_chambers@ohsd.uscourts.gov)) a list of witnesses who will testify or who will be available to testify. When more than a combined total of 10 witnesses are listed to testify at trial, a detailed and binding summary of the testimony of each witness shall be submitted.

Leave to call additional witnesses may be granted by the Court in unusual situations.

C. PREPARATION OF EXHIBITS

(1) Each of the parties shall assemble all documents, photographs or other materials expected to be used at trial. Such documents or copies thereof properly identified shall be provided to all other parties on or before **FIVE BUSINESS DAYS PRIOR TO THE FILING OF THE PROPOSED JOINT FINAL PRETRIAL ORDER.**

(2) Exhibits shall be presented to the Court as follows:

(a) All documents, photographs and other materials expected to be used at Trial shall be **SUBMITTED TO THE COURT 5 BUSINESS DAYS PRIOR TO THE FINAL PRETRIAL CONFERENCE** in looseleaf notebooks as follows:

One set of looseleaf notebooks shall contain original exhibits with a **NUMBERED ORIGINAL EXHIBIT STICKER ON THE LOWER RIGHT HAND CORNER OF THE DOCUMENT.** This set of notebooks is submitted to the Court for use by witnesses during trial, shall become part of the record and will accompany the jury to the jury room where appropriate.

Two additional sets of notebooks shall be assembled using copies of original exhibits after original exhibits have been marked with the appropriate exhibit labels. These notebooks shall be submitted to the Court for its use during trial.

In each notebook, the exhibit number shall also appear on a tab extending beyond the notebook on the right hand side thereof.

A neutral list of the party's exhibits shall be prepared by the parties which shall be supplied to the jury during its deliberations. **FOUR COPIES** of the exhibit list shall be provided to the Court and copies of the exhibits and the exhibit list provided to each party.

(b) THE PARTIES SHALL INCLUDE IN EACH VOLUME OF EXHIBITS, THE NEUTRAL LIST OF THE EXHIBITS AND SHALL PROVIDE THE COURT WITH FOUR (4) EXTRA COPIES OF THE EXHIBIT LIST AND WITNESS LIST.

(c) Joint exhibits will bear Roman numerals; plaintiff exhibits - Arabic numbers; and defendant exhibits - letters. Third-party exhibits may be marked with an identifying letter prefix.

(d) If defendant exhibits will exceed 26, defense counsel must promptly advise opposing counsel. In such event, both sides will identify exhibits by number as follows: Plaintiff: 1-499; 1000-1499; 2000-2499, etc.; Defendant: 500-999, 1500-1999, 2500-2999, etc.

(e) Deposited exhibits shall be retrieved by counsel within 10 days of final disposition of the case. Those not retrieved will be disposed of in accordance with Local Rule 79.2(b).

#### **D. JURY INSTRUCTIONS**

Proposed jury instructions and Special Verdict Forms shall be submitted to opposing party **10 BUSINESS DAYS** prior to trial. The parties shall **ELECTRONICALLY** submit to the Court **5 BUSINESS DAYS BEFORE** trial, copies of their opponent's instructions and forms which are: underlined in **BLUE** as to those matters which are correct statements of law; underlined in **YELLOW** as to those matters which are correct statements of law but irrelevant; and, underlined in **RED** as to those matters which misstate the law.

THE PARTIES SHALL EMAIL ([weber\\_chambers@ohsd.uscourts.gov](mailto:weber_chambers@ohsd.uscourts.gov)) TO THE COURT THEIR PROPOSED JURY INSTRUCTIONS (word or wordperfect format). Instructions upon issues that could not reasonably be foreseen in advance may be submitted at least **24 HOURS** prior to final argument. Each requested instruction must be presented on a separate page. Instructions must contain a citation of authority upon which counsel relies. Instructions which do not contain such citations may be rejected.

**E. DEPOSITIONS, INTERROGATORIES AND ADMISSIONS**

Depositions filed electronically with the Court shall be submitted to the Court in hard-copy **FIVE BUSINESS DAYS** prior to the Final Pretrial Conference.

If any party intends to present evidence by depositions, admissions or interrogatories, the party shall specify to the opposing party and the Court in the proposed Joint Final Pretrial Order those portions that will be presented as evidence. The opposing party shall note objections to any portion of the depositions, admissions or interrogatories in the proposed Joint Final Pretrial Order. No admission or interrogatory answer shall be considered for admission in evidence unless they are attached to the proposed Joint Final Pretrial Order.

Where a necessity for the use of a deposition, admission or interrogatory develops unavoidably after the proposed Joint Final Pretrial Order is submitted, leave to use such deposition, admission or interrogatory shall be granted. The parties shall advise the Court as soon as the necessity to read a deposition, admission or interrogatory becomes apparent.

Videotape presentation of a deposition or interrogatory must include a method for cutting off either sound or the entire picture from the jury in situations where the Court must rule on objections to testimony. Additionally, a written transcript of the deposition or copy of the interrogatory must be filed with the Court.

**F. HYPOTHETICAL QUESTIONS**

In a jury trial, no opinion witness may be asked a complex hypothetical question on direct examination unless the following procedure is observed. The question must be written in advance and submitted to the Court and the opposing party no later than the beginning of the session at which it will be asked. Assumptions must be separately numbered and identified as to source, i.e., testimony of a witness, deposition, admission, etc.

**G. DEMONSTRATIVE EVIDENCE**

If any sketches, models, diagrams or demonstrative evidence of any kind will be used during the trial or in argument, they must be exhibited to opposing counsel at least **10 BUSINESS DAYS** prior to trial. Objections to such exhibits must be submitted to the Court for decision **FIVE BUSINESS DAYS** prior to trial.

**H. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In a trial to the Court, at the time of the filing of the Joint Final Pretrial Order, each party shall **ELECTRONICALLY FILE WITH THE COURT** Findings of Fact and Conclusions of Law which the parties believe are necessary to be made to support a favorable judgment. Ten days thereafter each party shall **ELECTRONICALLY FILE AND PROVIDE A COURTESY COPY TO CHAMBERS** its opponent's Findings of Fact and Conclusions of Law underlined in the following manner:

1. Underline in **BLUE** those Findings of Fact which are true;
2. Underline in **YELLOW** those Findings of Fact which are true but irrelevant or unimportant;
3. Underline in **RED** those Findings of Fact which are not true; and
4. Underline in **RED** any misstatement of law contained in the Conclusions of Law.

**I. JOINT FINAL PRETRIAL ORDER**

A Joint Final Pretrial Order in the attached form must be **JOINTLY** prepared and submitted by counsel to the Court in every case which is not settled.

**IT IS SO ORDERED.**

s/Herman J. Weber  
Herman J. Weber, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

\_\_\_\_\_

Plaintiff

v.

CIVIL ACTION:

\_\_\_\_\_

Defendant

**JOINT FINAL PRETRIAL ORDER**

This matter is before the Court pursuant to Fed. R. Civ. P. 16.

**I. APPEARANCES:**

For Plaintiff(s):

For Defendant(s):

**II. NATURE OF ACTION AND JURISDICTION:**

A. This is an action for \_\_\_\_\_.

B. The jurisdiction of the Court is invoked under Title \_\_\_\_\_, United States Code  
\_\_\_\_\_.

C. The jurisdiction of the Court is \_\_\_\_\_ disputed.

**III TRIAL INFORMATION:**

A. The estimated length of trial is \_\_\_\_\_ days.

B. Trial to Court/Jury will begin on \_\_\_\_\_.

**IV. STATEMENT OF THE CASE:**

Submit a concise statement of the case for the information of the Court and for use in the impanelment of the jury. Include names, dates, places and elements of the claims, counterclaims, third-party claims and affirmative defenses if any. Each party may submit a separate statement.

V. **TRIAL DETERMINATIONS:**

A. **FACTS**

1. **Stipulated Facts:**

Suggested Language:

The parties stipulate as to the following facts.  
(List)

2. **Disputed Facts:**

Suggested Language:

The parties dispute the following facts.

- a. Plaintiff(s):
- b. Defendant(s):

B. **APPLICABLE PROPOSITIONS OF LAW:**

1. **Agreed Applicable Propositions of Law:**

Suggested Language:

The following applicable propositions of law are agreed to by the parties. (List)

2. **Disputed Applicable Propositions of Law:**

Suggested Language:

The following applicable propositions of law are disputed by the parties.

- a. Plaintiff(s):
- b. Defendant(s):

C: **Witnesses:**

Suggested Language:

The parties have listed on the appropriate appendices those persons who will be called or who will be available to testify. (Proceed to comply with Section B of the Order Instructing Certain Pretrial and Trial Procedures).

The parties reserve the right to call without prior notice to opposing counsel rebuttal witnesses whose testimony could not reasonably be anticipated.

D: **Expert Witnesses:**

Suggested Language:

The parties propose to call the following number of expert witnesses, all of whom have been disclosed to the opposing side:

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

The curriculum vitae of the expert witnesses and a binding summary of their written reports are attached as Appendix \_\_\_\_\_.

The parties certify we have complied with Fed. R. Civ. P. 26 pertaining to expert testimony.



E. **Exhibits:**

The parties will offer as exhibits those items listed on appendices hereof prepared in accordance with Section C of the Order Instructing Certain Pretrial and Trial Procedures as follows:

- (1) Joint Exhibits: Appendix \_\_\_\_\_  
(Roman Numerals)
- (2) Plaintiff Exhibits: Appendix \_\_\_\_\_  
(Arabic Numerals)
- (3) Defendant Exhibits: Appendix \_\_\_\_\_  
(Letters and/or numbers)
- (4) Third-Party Exhibits: Appendix \_\_\_\_\_  
(Letters Prefixed by the Initial of the Party)

F. **Depositions, Interrogatories and Admissions:**

Suggested Language:

Evidence from the following witnesses will be presented by\_\_\_\_\_.

Proceed to comply with Section E of the Order Instructing Certain Pretrial and Trial Procedures.

(or)

No evidence will be presented by deposition, videotape, interrogatories or admissions.

G. **Discovery:**

Suggested Language:

Discovery has been completed.

The following provisions have been made for discovery.

H. **Pending Motions:**

Suggested Language:

The following Motions are pending at this time.

(or)

There are no pending Motions at this time.

IV. **SETTLEMENT EFFORTS:**

Suggested Language:

The parties have made a good faith effort to negotiate a settlement.

(or)

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(Explain)

V. **TRIAL TO THE COURT:**

The parties will submit Findings of Fact and Conclusions of Law in accordance with Section H of the Order Instructing Certain Pretrial and Trial Procedures.

IT IS SO ORDERED.

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Herman J. Weber, Senior Judge  
United States District Court

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Counsel for Plaintiff(s)

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Counsel for Defendant(s)

(Rev.5/04)

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